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MAR 28 2007

In re Application of  
Kazutora Yoshino et al  
Application No. 10/628,541  
Filed: July 28, 2003  
Attorney Docket No. Y14A001

OFFICE OF PETITIONS

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 8, 2006 and supplemented on November 9, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)<sup>1</sup> must be accompanied by: (1) the required reply,<sup>2</sup> unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1) and (3).

As to item (1), the election submitted on November 8, 2006 is improper because the election states that "Group I, the claims 1-16, may be elected." **An election must state: I elect, and whatever the groupings are.**

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<sup>1</sup> As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

<sup>2</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

As to item (2), applicant is again reminded that **all** papers being submitted must be signed by **both** inventors. See 37 CFR 1.33(2)(b)(4).

**The petitions to revive in this application have been dismissed twice. Petitioner's continued failure to provide the proper items required to revive this application may be construed as intentional delay.**

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.



Karen Creasy  
Petitions Examiner  
Office of Petitions